

LAW OFFICES OF MARC J. WODIN

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Attorneys for Defendant CONSECO SENIOR HEALTH INSURANCE COMPANY

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAMELA THOMPSON, Individually)	CASE NO.: C 07-05437 PJH
and as Personal)	[Sonoma County Superior Court
Representative of CHARLES)	Case No. 241544]
THOMPSON, Deceased,)	

Plaintiff,

vs.

CONSECO SENIOR HEALTH
 INSURANCE COMPANY, a
 Pennsylvania corporation,
 DOES 1 through XX

Defendant(s).

**DEFENDANT'S MOTION FOR AN
 ORDER PURSUANT TO LOCAL RULE
 6-1 AND 6-3:**

**1. CHANGING THE HEARING DATE
 OF DEFENDANT'S MOTION FOR AN
 ORDER COMPELLING MEET AND
 CONFER/ENFORCING SETTLEMENT,
 PRESENTLY SET FOR OCTOBER 29,
 2008, TO OCTOBER 1, 2008, THE
 DATE OF THE HEARING ON
 PLAINTIFF'S MOTION TO ENFORCE
 SETTLEMENT, OR;**

**2. CHANGING THE HEARING DATE
 ON PLAINTIFF'S MOTION TO
 ENFORCE SETTLEMENT FROM
 OCTOBER 1, 2008 TO OCTOBER
 29, 2008, OR;**

**3. SETTING BOTH MOTIONS FOR
 HEARING, TOGETHER, ON SUCH
 DATE AS THE COURT DEEMS
 APPROPRIATE**

[PROPOSED] ORDER

**(FILED CONCURRENTLY WITH
 DEFENDANT'S MOTION FOR AN
 ORDER COMPELLING MEET AND
 CONFER/ENFORCING SETTLEMENT)**

Assigned to the Honorable
 Phyllis J. Hamilton

1 Defendant CONSECO SENIOR HEALTH INSURANCE COMPANY

2 ("defendant") hereby moves the court, an order

3 1. changing the hearing date on defendant's motion for an
4 order compelling meet and confer/enforcing settlement and for
5 sanctions, so that it will be heard on October 1, 2008, the date
6 of plaintiff's motion to enforce the settlement, or;

7 2. changing the hearing date on plaintiff's motion to
8 enforce settlement, to October 29, 2008, the date currently set
9 for hearing on defendant's motion, or;

10 3. setting both motions for hearing, together, on such other
11 date as the court deems appropriate, and;

12 4. setting a briefing schedule for the motions, if
13 appropriate.

14 Said motion is made pursuant to Local Rules 6-1 and 6-3, on
15 the ground that there is good cause to change the time of these
16 motions so that they will be heard at the same time, and
17 defendant will be severely prejudiced if that is not done, in
18 that:

19 On August 27, 2008, plaintiff filed a motion to enforce the
20 settlement, and for sanctions, set for October 1, 2008. On
21 September 2, 2008, upon its completion, defendant filed a motion
22 to compel a meet and confer, and/or to enforce the settlement,
23 and for sanctions, set for October 29, 2008, the first date the
24 court then had available for the hearing.

25 Both motions concern the same subject matter, a settlement
26 reached in this matter, and both seek to enforce the settlement.
27 However, they seek to enforce the settlement on substantially
28 different terms. Further, defendant's motion also seeks to have

1 the court order plaintiff's attorney to engage in a meet and
2 confer on matters related to the settlement.

3 Having these motions heard at the same time will allow for a
4 complete, uniform, resolution of the issues related to the
5 settlement and its enforcement. Having them heard at different
6 times creates a substantial danger of incomplete and inconsistent
7 resolution of those issues, and duplication of effort.

8 This relief is necessary, because there is otherwise no way
9 for defendant to have these motions heard at the same time.
10 Defendant has acted diligence in preparing its substantive
11 motion, and bringing this motion.

12 Plaintiff's attorney would not stipulate to the relief
13 sought by this motion.

14
15 DATED: September 2, 2008

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17 By /s/ Marc J. Wodin
18 MARC J. WODIN
19 Attorneys for Defendant CONSECO
20 SENIOR HEALTH INSURANCE COMPANY
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MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Local Rules 6-1 and 6-3, the court can change the time on matters filed with the court.

The parties mediated this matter, and reached a settlement. Common to such a circumstance, where it is not feasible to then and there prepare a formal, written settlement agreement, a cursory, five sentence memorandum, stating essential terms, was signed, to make the settlement binding, with an express proviso that defendant would provide a Release and Settlement Agreement ("Agreement") which plaintiff and her attorney would sign.

Defendant's attorney provided plaintiff's attorney with its standard Agreement, with provisions and language appropriate to such a document, modified for particulars of the settlement.

When plaintiff's attorney wrote, questioning two of the provisions, defendant's attorney wrote back that he would be happy to consider changes in the language, and requested that plaintiff's attorney call, so they could discuss them. There was no response to that, and two follow up letters.

Plaintiff's attorney then wrote, asserting a new position - that the five sentence memorandum was the settlement agreement, and there could be no comprehensive written settlement agreement.

Defendant's attorney responded that this assertion was contrary to the language of the memorandum, and the circumstances under which it was prepared, and was unreasonable. He again offered to meet and confer. Again, there was no response.

On August 11, 2008, after defendant filed a Certification that agreed upon consideration (an executed Agreement) had not been provided, the court vacated its prior dismissal.

1 On August 27, 2008, plaintiff filed a motion to enforce the
2 settlement, asserting that the five sentence memorandum is the
3 settlement agreement.

4 Defendant's attorney was also working on a motion, more
5 extensive than plaintiff's motion, which was completed and filed
6 September 2, 2008. It seeks orders 1. that plaintiff's attorney
7 meet and confer over the language of the Release and Settlement
8 Agreement; 2. enforcing the settlement, by ordering plaintiff
9 and her attorney to sign a Release and Settlement Agreement, with
10 such modifications, if any, as the court deems appropriate, or by
11 entering judgment pursuant to the terms of such an Agreement; 3.
12 that plaintiff and/or her attorney pay sanctions.

13 The court advised that defendant's motion could not be heard
14 until October 29, 2008; so the motion was filed for that date.

15 There is good cause to have these motions heard together,
16 and defendant will be severely prejudiced if they are not. They
17 concern the same subject matter, the settlement, which they both
18 seek to enforce, but on substantially different terms. Further,
19 defendant also seeks to have the court order a meet and confer.
20 Hearing them at the same time will allow for a complete, uniform,
21 resolution of the issues related to the settlement. Hearing them
22 at different creates a substantial danger of incomplete and
23 inconsistent resolution of those issues, and will cause
24 unnecessary duplication of effort.

25 DATED: September 2, 2008

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26 By /s/ Marc J. Wodin

MARC J. WODIN

27 Attorneys for Defendant CONSECO
28 SENIOR HEALTH INSURANCE COMPANY